



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 10, 2003

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2003-0221

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174836.

The City of League City (the "city"), which you represent, received two requests for Police Civil Service discipline and promotional passover appeals, along with related decisions, from January 1992 - June 2002. You state that some information has been released to the requestor. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.111, and 552.117 of the Government Code.¹ You inform us that you have notified the interested third parties of the request for information. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See id.*

You indicate that the city has adopted civil service for its police officers pursuant to Chapter 143 of the Local Government Code. Section 143.089 applies to civil service cities and contemplates two different types of personnel files, one that the city police department is required to maintain as part of the police officer's civil service file, and one that the city police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The civil service file must contain certain specified items, including documents relating to any misconduct in those cases where the city police department took disciplinary action against the peace officer. *See id.* § 143.089(a)(2). However, documents relating to any alleged misconduct or disciplinary action must be removed from the civil

¹As you did not submit to this office written comments stating the reasons why section 552.111 would allow the information to be withheld, we find that you have waived this exception. *See* Gov't Code §§ 552.301, .302.

service file if the city police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See id.* § 143.089(b), (c). Thus, subsections (a)-(c) limit the contents of the civil service file. Subsection (g) authorizes, but does not require, the city police department to maintain for its use a separate and independent, internal personnel file on a police officer. Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Local Gov't Code § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *See City of San Antonio*, 851 S.W.2d at 949.

You inform us that the city maintains three files relating to each officer which include a civil service commission file, as required by section 143.089(a) of the Local Government Code; a departmental personnel file maintained by the police department, as permitted by section 143.089(g) of the Local Government Code; and an appeals file. We believe that this practice is contrary to the purpose and legislative intent of section 143.089 of the Local Government Code. Section 143.089 contemplates the existence of only two personnel files concerning a particular police officer. Documents relating to commendations, periodic evaluations by the officer's supervisor, and misconduct that resulted in disciplinary action against the officer must be placed in the civil service file and are subject to disclosure under chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(a)(1)-(2). Documents that relate to unsustained allegations of misconduct or disciplinary action taken without just cause must be kept in the police department's confidential section 143.089(g) file. Other personnel records may be kept in either the civil service file, the department file, or both. The maintenance of the appeals file, the contents of which are subject to disclosure under chapter 552 of the Government Code, is contrary to the city's election to be governed by chapter 143 of the Local Government Code and to the legislative purpose of section 143.089. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App. – San Antonio 2000, pet. denied.) (restricting confidentiality under section 143.089(g) to "information reasonably related to a police officer's or fire fighter's

employment relationship”); *see also* Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

If the information in Exhibit A relates to any misconduct in a case where the city police department took disciplinary action against a peace officer, it must be included as part of the civil service file under section 143.089(a). However, if no disciplinary action was taken, the information in Exhibit A must be placed in the city police department’s internal file, as provided in section 143.089(g). The information contained in Exhibit B may be placed in either file, or both. While information in the police department personnel file is confidential under section 143.089(g), information maintained in the civil service file under section 143.089(a) is subject to release unless an exception to disclosure applies.

Assuming the submitted information is placed in the officer’s civil service file and is subject to release under chapter 552 of the Government Code, we note that portions of the information are excepted from disclosure under section 552.117(2). The city must withhold those portions of the records that reveal an officer’s social security number under section 552.117(2). We have marked this information accordingly.

To summarize, if the information at issue is included in the “(g)” file, it is excepted from public disclosure pursuant to section 552.101 in conjunction with section 143.089(g). If, however, the city maintains this information in the “(a)” file, the information must be released, except that an officer’s social security number must be withheld under section 552.117(2).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

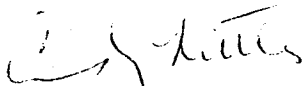
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/sdk

Ref: ID# 174836

Enc. Submitted documents

c: Mr. C.W. deBoisblanc Jr.
106 Pecan Drive
League City, Texas 77573
(w/o enclosures)